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April 7, 2021

**Via ECF**

The Honorable Eric R. Komitee  
United States District Court for the Eastern District of New York  
Theodore Roosevelt United States Courthouse  
225 Cadman Plaza East  
Brooklyn, NY 11201

Re: Capogrosso v. Gelbstein, et al., No. 18 Civ. 2710 (EK) (LB)

Dear Judge Komitee,

This Office represents Defendants Alan Gelbstein, Ida Traschen, and Danielle Calvo, in their individual capacities, and New York State Department of Motor Vehicles ("DMV") Commissioner Mark Schroeder, in his official capacity (collectively, the "State Defendants"), in the above-referenced matter. I write pursuant to Your Honor's Individual Rule III(B)(4) and the related docket entry dated today in order to respond to the pre-motion conference letter filed by Defendant David Smart, Dkt. No. 170, concerning an upcoming motion for summary judgment.

The State Defendants do not oppose Mr. Smart's motion for summary judgment, and in fact have consistently maintained that Mr. Smart was not a state employee or actor. See, e.g., Dkt. No. 44 at 19-20; Dkt. No. 158 at 1. We would request that any briefing schedule for Mr. Smart's motion be harmonized with that of the State Defendants' upcoming motion for summary judgment, so that all parties can proceed at the same time and the Court can render a single omnibus opinion resolving the motions, and hopefully the case.

Respectfully submitted,

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Cc: All counsel of record (via ECF)

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